



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,942	11/06/2001	Hartmus Ahrens	ACR2691P1US	6527

7590

04/26/2004

Ralph J. Mancini  
Akzo Nobel  
Intellectual Property Department  
7 Livingstone Avenue  
Dobbs Ferry, NY 10522-3408

EXAMINER
----------

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
----------	--------------

1751

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

161

<b>Office Action Summary</b>	Application No. 09/914,942	Applicant(s) AHRENS ET AL.	
	Examiner John R. Hardee	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.  
     4a) Of the above claim(s) 2,3,7,12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4-6,8 and 14 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). This restriction is made FINAL.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 4-6, 8 and 14 remain rejected under 35 U.S.C. 103(a) as being unpatentable over EP 330,261 A1. The reference discloses fabric softening compositions comprising 2-hydroxypropyl monoesters of the form shown in the figure at p. 4, line 55. R1 is a hydrocarbyl group of 14-22 carbons; R2 is a hydrocarbyl group of 13-21 carbons, and R is alkyl or hydroxyalkyl of 1-6 carbons (p. 5, top). All of the R groups may be unsaturated. Fabric softening compositions according to the invention comprise about 1-20% of this monoester and a carrier solvent (p. 3, lines 49+). These compositions may further comprise cationic and nonionic surfactants (examples, p. 6, lines 55+). These compositions do not comprise a quat exactly as portrayed in claim 1. However, it would have been obvious at the time the invention was made to incorporate such a quat, because the prior art quats are one-carbon homologs of quat II of claim 1.

Accordingly, the person of ordinary skill in the surfactant art would expect the claimed quat to have the same properties as those of the prior art.

***Allowable Subject Matter***

2. Claims 9 and 10 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

3. Applicant's arguments filed February 2, 2004 have been fully considered but they are not persuasive. Applicant argues that the presently claimed compounds employ a 4-carbon synthon, while those of the prior art employ a 3-carbon synthon, epichlorohydrin, and that the presently claimed compounds cannot be made by the process of the prior art. This is not persuasive because the prior art compounds are one-carbon homologs of the presently claimed compounds. As such, they would be expected to perform similarly. This is borne out by the teachings of the prior art, which are that the disclosed compounds are useful in the formulation of fabric softeners.

Applicant further argues that the presently claimed compounds are halogen free, as they are made without epichlorohydrin. This is not persuasive because this has not been disclosed in the specification, nor has it been demonstrated in the specification as being advantageous, nor has a halogen free composition been claimed. Unclaimed limitations cannot be a basis for patentability. Furthermore, where unobvious results are

Art Unit: 1751

relied upon as a basis for patentability, a proper comparative showing is a minimum requirement. *In re Eisenhut*, 114 USPQ 287. Objective evidence of unobvious results must be commensurate in scope with the claims. *In re Prater*, 162 USPQ 541. *In re Tiffin*, 172 USPQ 292. Where the claims cover mixtures of numerous compounds, the evidence must provide an adequate basis for reasonably concluding that the untested compounds encompassed by the claims would behave in the same manner as the tested compositions. *In re Clemens*, 622 F.2d 1029, 1035-6, 206 USPQ 289, 296 (CCPA 1980). *In re Linder*, 457 F.2d 506, 508 173 USPQ 356, 358 (CCPA 1972). *In re Greenfield*, 197 USPQ 227.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone

Art Unit: 1751

number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Hardee  
Primary Examiner  
April 21, 2004